

TENTATIVE RULINGS for CIVIL LAW and MOTION

April 14, 2010

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6941

TENTATIVE RULING

CASE: **American Express Centurion Bank v. Peychev**
Case No. CV G 09-1976

Hearing Date: **April 14, 2010** **Department Fifteen** **9:00 a.m.**

American Express Centurion Bank's unopposed motion for judgment on the pleadings is **GRANTED WITHOUT LEAVE TO AMEND**. (Code Civ. Proc., § 438.) Plaintiff shall promptly submit to the Court a form of judgment. Plaintiff shall give the defendant notice of this ruling by no later than April 16, 2010, and file a proof of service showing such notice.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.

TENTATIVE RULING

Case: **Paik v. Treon**
Case No. CV PT 09-320

Hearing Date: **April 14, 2010** **Department Fifteen** **9:00 a.m.**

Before the Court is the motion to strike filed by defendant Michael Walla. The Court notes that Mr. Walla filed a notice of joinder in co-defendants' motions to strike in support of his own motion to strike which the Court granted on January 25, 2010.

Resolution of an anti-SLAPP motion requires the court to engage in a two-step process. Initially, the court determines whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. It is the moving defendant's burden to demonstrate that the act or acts of which the plaintiff complains were taken "in furtherance of the [defendant]'s right of petition or free speech under the United States or California Constitution in connection with a public issue," as defined in the statute. (Code Civ. Proc., § 425.16, subd. (b)(1).) If the court finds such a showing has been made, it then determines whether the plaintiff has demonstrated a probability of prevailing on the claim. (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.)

The courts have interpreted Code of Civil Procedure section 425.16 as applying to malicious prosecution actions that concern only private disputes between private individuals. (*Jarrow Formulas v. LaMarche* (2003) 31 Cal.4th 728, 738-741.) This action for malicious prosecution concerns a private dispute between private parties. Therefore, this action is subject to the anti-SLAPP statute.

The Court must now determine whether the plaintiffs have demonstrated a probability of prevailing on the claim. (*Equilon Enterprises v. Consumer Cause, Inc.*, *supra*, at 67.) “In deciding the question of potential merit, the trial court considers the pleadings and evidentiary submissions of both the plaintiff and the defendant [citation]; though the court does not weigh the credibility or comparative probative strength of competing evidence, it should grant the motion if, as a matter of law, the defendant’s evidence supporting the motion defeats the plaintiff’s attempt to establish evidentiary support for the claim.” (*Jarrow Formulas, Inc. v. LaMarche*, *supra*, at 741.)

Plaintiffs, in a malicious prosecution action, must plead and prove that the prior action was (1) commenced by or at the direction of the defendant and was pursued to a legal termination in plaintiffs’ favor; (2) brought without probable cause; and (3) initiated with malice. (*Bertero v. National General Corp.* (1974) 13 Cal.3d 43, 50.)

Based upon the evidence submitted, the Court finds that there is a triable issue of fact as to whether the underlying litigation was commenced at the direction of Mr. Walla. However, the matter does not end there. Even if, the Court was to find that Mr. Walla commenced the underlying litigation, the Court does not find that “any reasonable attorney would agree” that defendant’s action was “totally and completely without merit.” It was objectively reasonable for defendant to conclude, based on the agreements, letters, documents and actions of all the parties involved, that there was a tenable breach of contract action. (*Wilson v. Parker, Covert & Chidester* (2002) 47 Cal.4th. 811, 817; *Roberts v. Sentry Life Insurance* (1999) 76 Cal.App.4th 375, 382; Plaintiffs’ Appendix of Evidence 1-111, 113-139; Dec. of Walla, ¶¶ 1-21; Dec. of Treon, ¶¶ 1-19.)

Accordingly, defendant’s motion to strike is **GRANTED**.

Defendant’s request for judicial notice is **GRANTED**. (Evid. Code, §§ 452 & 453.)

Defendant’s objections to evidence numbers 1-2, 4, and 116 are **SUSTAINED**. All other objections are **OVERRULED**.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Ryan v. Levine**
 Case No. CV CV 08-1696

Hearing Date: **April 14, 2010** **Department Fifteen** **9:00 a.m.**

The unopposed motion to appoint Shannon Ryan McIlvain as the plaintiff's representative to prosecute this action is **GRANTED**. (Code Civ. Proc., § 375.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **The Davis Center, LLC v. Lumberman's Mutual Casualty Company**
 Case No. CV CV 08-2476

Hearing Date: **April 14, 2010** **Department Fifteen** **9:00 a.m.**

This matter is **CONTINUED** on the Court's own motion to April 29, 2010, at 9:00 a.m. in Department 15.